

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
Applications for Consent to the Transfer)	
of Control of Licenses and Section 214)	CC Docket No. 98-141
Authorizations from Ameritech Corporation,)	
Transferor, to SBC Communications, Inc.,)	
Transferee)	

**COMMENTS OF THE DSL ACCESS
TELECOMMUNICATIONS ALLIANCE (“DATA”)**

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SUMMARY

At first glance, SBC's request for Commission interpretation, modification or waiver of the Merger Conditions is facially appealing. However, upon further examination it is clear that SBC's request is actually the opening salvo in a substantial and complex restructuring of the ILEC network for the provision of advanced services. As such, SBC's provocative proposal filed on February 15, 2000 cannot and should not be rushed. Further, it must not be analyzed in isolation, but rather must be reviewed in its broad and full context. Yet, to date, after individual and industry-wide discussions, SBC has failed to provide carriers such as those in the DSL Access Telecommunications Alliance ("DATA") with the level of detail regarding the technical and operational aspects of its proposal necessary for Competitive Local Exchange Carriers ("CLECs") to provide a complete assessment of its merits or demerits.

SBC has attempted to portray its filing as merely raising two narrow, legal issues – whether ownership of the DSL line cards in SBC's remote terminals, and ATM switches (which SBC calls Optical Concentration Devices, or "OCDs") to be placed in SBC's central offices, should remain with the ILEC or be transferred to SBC's advanced services subsidiary, ASI. In reality, SBC's proposal is a fundamental reconfiguration of the existing network, implementing new technology in such a way as to restrict the network supporting advanced services to a single vendor and limited set of options for competitors. SBC's deployment of as many as 20,000 new fiber-fed digital loop carrier systems in its local loop network – including the plan to make available a "one-size-fits-all" Alcatel ADSL-based unbundled network element offering – would for hundreds of thousands of subscribers replace the existing state of robust *facilities*-based competition with a take-it-or-leave-it, all-SBC UNE product, or "competition lite." By precluding in many instances consumers' opportunity to be served by multiple xDSL

technologies, with multiple features and functionalities, SBC's plan to impose "competition lite" through the exclusive unbundling option it proposes to offer CLECs actually would reverse the Commission's long-standing goal of promoting facilities-based competition over non-facilities-based competition in all markets.

DATA wishes to make it clear that it supports the deployment of an open architecture fiber-fed DLC local network that is capable of carrying xDSL signals of all types, using equipment from all vendors. Such a network is clearly technically feasible, can be deployed today, and can be the vehicle by which the Commission's goal of bringing advanced broadband services to the greatest number of subscribers can be realized. This open new network architecture, in fact, can be deployed using the same types of components as those contained in SBC's proposal.

Unfortunately, SBC has not proposed such an open, competitively neutral network architecture. Instead, SBC proposes to reserve to itself the role of determining what broadband technologies should be made available, to whom, when, and at what price, to the millions of subscribers on its network. This is a step backward from today's more robust and rapidly advancing technological landscape. SBC's new network design and implementation will conclusively determine the ability of CLECs to compete for advanced services now and in the future. However, SBC's proposal is too vague and unsupported, and its effects are too board and fundamental, for the Commission to grant its approval without further investigation. The Commission should establish a process through which all issues raised by the totality of SBC's proposal may be examined. Not until such a process is complete can the Commission ensure that SBC's plans for a new network topology will be implemented in a pro-competitive manner.

Only then will the Commission have a proper basis on which to make the decision requested by SBC.

The incredibly tight time frames for filing comments, let alone the suggestion by SBC for an extremely and unreasonably truncated decision in a “matter of days” are not appropriate given the complexity and gravity of SBC’s proposed new network topology. Limiting parties to the existing, rapid comment schedule would necessarily mean that the Commission would not have sufficient evidence to determine whether SBC’s request for waiver complies with its obligations under the Merger Conditions to treat competitors in a non-discriminatory manner, to reduce uncertainty, and to accelerate competition for advanced services.¹ Further, the Commission will be hampered in its ongoing efforts to ensure that the SBC/Ameritech merger does not harm competition by monitoring service quality and performance and the deployment of new advanced services to underserved segments of the population.²

SBC has provided no justification for an expedited schedule, other than its obligation to comply with the Commission’s orders. While DATA applauds SBC’s recognition of its obligation to comply with Commission’s orders, it is not clear what has prompted SBC’s newfound sense of urgency. SBC’s obligations arise from Commission orders that have been in place for months, yet SBC has refused to reveal to CLECs the manner in which it intended to implement these obligations. Worse, SBC has been planning this new network architecture and the equipment needed to implement it since late 1998, according to SBC representatives at a public meeting held in Dallas, Texas on March 1, 2000 regarding SBC’s proposal to the FCC.³

¹ *In re Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee, CC Docket No. 98-141, Memorandum and Order*, ¶ 363 (rel. Oct. 8, 1999) (*Merger Conditions Order*).

² See e.g., *Merger Conditions Order* ¶¶ 376, 377, 404.

³ Statement of James Keown, General Manager Project Management ATM/VTOA, during Project Pronto meeting in Dallas, Texas on March 1, 2000. This quotation was excerpted from a videotape made of the entire meeting.

The Commission should not now be forced to rush to judgment to accommodate SBC's newfound sense of obligation for compliance efforts, or its rush to make up for a slow start.

Accordingly, the Commission should revise the procedural schedule in this proceeding to assure full and complete development of the relevant factual record *before* the Commission decides the questions presented by SBC. This can be accomplished by conducting an investigation or rulemaking proceeding to examine the crucial issue of open network deployment and configuration. At a minimum, the Commission should establish a comprehensive technical on-the-record forum in which the Commission and all carriers affected by the proposal, such as those in the DATA coalition can fully explore the myriad critical questions raised by SBC's proposal. Comments following such an inquiry will enable the Commission to expeditiously and fully address the issues raised by SBC.

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The DSL Access Telecommunications Alliance (“DATA,”), represented herein by Rhythms NetConnections Inc. and the Rhythms Links Inc. subsidiaries (collectively “Rhythms”), Covad Communications Company, Bluestar Communications, NorthPoint Communications, Inc., and HarvardNet, Inc., by its attorneys, submit[s] these comments in response to the Commission’s February 18, 2000 request for comments regarding the Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions on behalf of SBC Communications, Inc. (“SBC”). On February 15, 2000, SBC sought interpretation from the Commission on the Merger Conditions involving the ownership and regulatory treatment of certain network equipment.⁴ As part of its filing, SBC indicated that the network equipment in question will be implemented in a new network topology that will be drastically restructured to support advanced services. Although it was woefully lacking in detail, SBC’s proposal clearly raises significant competitive concerns that the Commission *must* address. The Commission should use its authority to police and enforce the Merger Conditions⁵ to investigate SBC’s proposal fully before rendering any final determination on a waiver from the Merger Conditions.

⁴ Letter from Paul K. Mancini, Vice President & Assistant General Counsel, SBC Communications, Inc., to Lawrence E. Strickling, Chief, Common Carrier Bureau, FCC (Feb. 15, 2000)(“ *February 15th Letter*”).

⁵ *Merger Conditions Order* ¶ 360.

At a minimum, the Commission must convene an on-the-record technical forum to expedite full and complete examination of SBC's proposal. SBC should be required to supply complete answers to all relevant questions and requests for information. Once all relevant information is in hand, interested parties can then file comments based on a complete record, and the Commission will then have a proper basis to make the decision requested by SBC.

INTRODUCTION

The Commission seeks comment on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions involving the ownership of certain equipment to be deployed as part of SBC's new fiber-fed Digital Loop Carrier ("DLC") network infrastructure.⁶ SBC asserts that its filing merely seeks Commission approval for two narrow ownership issues concerning new equipment to be deployed as part of its new fiber infrastructure. Specifically, SBC's *February 15th Letter* focuses on whether SBC or its separate advanced services affiliate, SBC Advanced Solutions, Inc. ("SBC ASI"), should own the combination voice/ADSL cards in the DLCs located in remote terminals and ATM switches (which SBC calls Optical Concentration Devices, or "OCDs")⁷ to be deployed in all of SBC's central offices.

In evaluating SBC's proposal, the Commission should be mindful of its statutory obligations to ensure that SBC's proposal comports with the Telecommunications Act of 1996⁸ including not only Sections 251, 252, 271, and 272, but also with the purposes of Section 256:

⁶ Public Notice, *Common Carrier Bureau Seeks Comment on SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions*, DA 00-335, CC Docket No. 98-141, ASD File No. 99-49 (Rel. Feb. 18, 2000).

⁷ *February 15th Letter* at 6.

⁸ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.*

“to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications services.”⁹ Clearly, the Commission must ensure that any SBC proposal the Commission approves is consistent with SBC’s obligation to open local networks to competition,¹⁰ rather than improperly foreclosing competition.

The framing of SBC's proposal has the effect of directing the Commission’s attention away from the forest by focusing on a few trees. SBC’s proposal for a new network topology throughout its 13-state region raises numerous, substantive technical and operational issues that directly affect the ability of the DATA carriers to provide advanced services. The effect of such new network topology *could* be pro-competitive. SBC *could* implement an open technology platform that supports all carriers’ offerings equally. However, SBC’s proposal, if approved, would implement the new technology in such a way as to restrict the network supporting advanced services to a single vendor, a single type of DSL, and a needlessly limited set of options for competitors. Thus, SBC’s new network design will determine conclusively the ability (or lack thereof) of CLECs to compete for advanced services now and in the future.

SBC’s proposal for its new network architecture is much like proposing a new arrangement for different trucking companies operating over a toll road. Trucking company XBC owns all lanes of the toll road, but to encourage competition, the government has ordered XBC to transfer its own trucks to a separate subsidiary and to more fully open the lanes of the road to competitors’ trucks. In response, XBC proposes to add more lanes and toll booths to support competition, but decides unilaterally to repaint the lanes and to redesign the toll booths

⁹ 47 U.S.C. § 256(a).

to a width that will currently accommodate only trucks owned by XBC. Meanwhile, XBC approaches the government with its new proposal for reconfiguring the toll road, but rather than focusing on the total effect of the reconfiguration, XBC attempts to convince the government that it should only examine whether XBC or its soon-to-be affiliate should own the toll booths.

The Commission must not allow SBC to divert attention from the real issues at hand. SBC's new network topology will have a direct and substantial effect on the ability of CLECs to compete in offering advanced services. The Commission should not inadvertently assist SBC in creating a new anti-competitive network design by limiting its analysis to a narrow set of "ownership" issues, rather than the overall competitive effect of the introduction of such new equipment into the network. SBC has not provided sufficient details for CLECs such as the members of DATA to determine fully the likely effects of SBC's proposal. However, based on the preliminary details available, it appears that SBC's proposal could be modified to provide benefits to competitors as well as to SBC's own affiliate DSL operations. Such modifications can be made only if the Commission conducts the investigation recommended herein by DATA.

DISCUSSION

I. THE COMMISSION'S CONSIDERATION OF SBC'S PROPOSAL IS PREMATURE AND MUST NOT BE RUSHED.

SBC's proposal is a fundamental reconfiguration of its existing network that will determine conclusively the ability of CLECs to compete for advanced services now and in the future. The vague and shifting substance of SBC's proposal is insufficient for the Commission to approve a proposal with such far-reaching consequences. Unfortunately, rather than providing

¹⁰ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd. 15,499, ¶1 (1996) ("*First Report and Order*") (Local Competition

a comprehensive and detailed proposal, accurate and complete responses to the questions posed by CLECs, and an adequate period for analysis, SBC is attempting to rush the Commission to judgment. SBC has created an unnecessary amount of pressure on the Commission to act by requesting that the Commission decide the issue in a matter of days.¹¹ All of these factors render SBC's proposal premature.

DATA has thoroughly reviewed the minimal materials SBC provided with its proposal to the Commission. Despite subsequent requests for specific information regarding its proposal, SBC has asserted that it does not know, or cannot provide, such information. SBC's inability to answer relevant questions has continued through the date on which CLECs are required to file comments regarding SBC's proposal.

Five SBC employees attended a meeting in Dallas, Texas with CLECs regarding SBC's new network topology less than 48 hours before the comments in this proceeding were due. However, the group was collectively unable to answer numerous fundamental technical, ordering and other operational questions regarding the SBC proposal.

SBC's proposed DLC equipment to be located in remote terminals in the new network topology will support only ADSL, the sole type of xDSL chosen by SBC and SBC ASI for retail advanced services deployment. In contrast, most CLECs have already deployed multiple types of xDSL, including RADSL, SDSL and IDSL, and are planning to deploy new types of xDSL soon, such as HDSL2 and SHDSL, from multiple vendors. Moreover, SBC proposes to deploy only Alcatel DLCs, and only Alcatel combination voice/ADSL DLC plug-in cards. Thus, SBC proposes to force CLECs to use a single ADSL vendor, who is also SBC's and SBC ASI's vendor of choice for its retail DSL service. The five SBC employees, including a vice president,

Order).

a product manager and a regulatory manager, were unable to state whether and under what terms other types of xDSL service (beyond SBC's chosen Alcatel ADSL) would be supported for CLECs in the future, when additional types of xDSL might be supported, or where additional types of xDSL would be supported.

Another example of disturbing information obtained from SBC at the Dallas meeting concerns the bandwidth and quality of service of the "broadband UNE" that SBC proposes to offer under its new network architecture. ADSL technology, including the version offered by Alcatel, can support downstream bit rates of over 8 Mbps. Despite the fact that this bandwidth can be achieved, and is currently being achieved by SBC and many CLECs, the proposed interconnection agreement language attached to the *February 15 Letter* would limit CLECs' use of the broadband UNE to 1.5 Mbps downstream. Although SBC personnel represented to the attendees at the Dallas meeting that the limitation would change, SBC did not distribute new interconnection agreement language at that meeting, and to DATA's knowledge, has not submitted any new language to the FCC.

Equally disturbing is the lack of choices of Quality of Service ("QoS") Classes being offered by SBC for its broadband UNE. ADSL signals are carried in Asynchronous Transfer Mode ("ATM") format. ATM networks are packet-switched rather than circuit-switched. As a result, communications traffic is carried on virtual transmission paths, known as Permanent Virtual Circuits ("PVCs") and Permanent Virtual Paths ("PVPs"). There are well established ATM QoS Classes applicable to PVCs and PVPs, which support different services with different latency (delay) requirements. For example, Internet access can tolerate high latency, while voice or video services require very low latencies. ATM QoS Classes include Available Bit Rate,

¹¹ *February 15th Letter* at 6.

Constant Bit Rate, Variable Bit Rate – real time; Variable Bit Rate – not real time; and Unspecified Bit Rate. Of these five QoS Classes, SBC is only proposing to offer Unspecified Bit Rate on the Broadband UNE it will offer to CLECs. This QoS Class is used primarily to support Internet access. The lack of availability to CLECs of the other QoS Classes will unnecessarily and severely limit CLECs' ability to offer consumers a broad variety of ATM-based services using the broadband UNE offered by SBC.

Moreover, the SBC personnel were equally unable to identify what percentage of SBC's loops would be provisioned over its proposed fiber infrastructure topology, or what effect the new network topology will have on the availability of all-copper loops for xDSL services. (The SBC personnel did, however, repeatedly insist that SBC would not transfer all-copper loops longer than 12,000 feet currently being used for xDSL services to the new fiber-fed DLC architecture. DATA submits that the Commission should require SBC to live up to this commitment as part of the Commission's ruling on SBC's proposal.) Numerous other technical questions remain unanswered as well. A representative, initial list of such issues is provided with this filing as Attachment A.¹²

Perhaps one reason for SBC's inability to answer CLEC questions was SBC's failure to make available technical personnel with responsibility for developing the new topology and new products based on it. Rod Cruz, Director Broadband UNE at SBC, indicated at the Dallas meeting that technical questions could not be answered because "we have a whole group that works on technology deployment, as an organization, but unfortunately we did not have the

¹² DATA does not represent this list to be comprehensive, and reserves the right to (1) supplement the list, and (2) request the Commission to issue the revised list to SBC as a Commission Request For Information to which SBC must provide complete and accurate responses.

notion to invite and bring them to the meeting.”¹³ Such a “notion” should have been obvious to SBC, given that at least one carrier, Rhythms, had posed many of these technical questions two days earlier in a meeting with SBC and had been told to wait for answers until the Dallas meeting, just two days prior to the comment deadline.

In addition to the lack of available information, another serious problem with SBC’s proposal is that it is nowhere near final. During the meeting in Dallas, SBC acknowledged that its proposal is “out of date” and that some of the language in SBC’s proposed interconnection agreement contract language submitted to the Commission with the *February 15th Letter* has since changed “fundamentally.”¹⁴ Yet, SBC indicated it has made no filings to update its proposal and has no intention to do so. Given the shifting substance of SBC’s proposal, none of the CLECs nor the Commission is in a position to evaluate SBC’s proposal fully. As a result, parties asked SBC to agree to postpone the date for opening comments from March 3, 2000. SBC refused.

Given the shifting substance of SBC’s proposal, it is clear that it would be premature for the Commission to approve the new network topology that SBC is setting forth. Moreover, SBC has provided no justification for an expedited schedule other than its obligation to comply with the FCC’s Merger Conditions order, the Line Sharing Order and the UNE Remand Order. DATA is unclear what factors underlie SBC’s newfound sense of urgency. SBC has known of its obligations under all three orders for months, yet has refused to reveal to CLECs the ways in which it intended to implement these obligations. Worse, SBC has been planning this new network architecture and the equipment needed to implement it since late 1998, according to

¹³ Statement of Rod Cruz during Project Pronto meeting in Dallas, Texas on March 1, 2000. This quotation was excerpted from a videotape made of the entire meeting.

¹⁴ Statement of Chris Boyer, Area Manager UNE Data Networks, during Project Pronto meeting in Dallas, Texas on March 1, 2000. This quotation was excerpted from a videotape made of the entire meeting.

James Keown, General Manager, Project Management ATM/VTOA at SBC. Further, he stated that SBC's decisions regarding the new equipment to be deployed in the fiber-fed DLC network were driven by economics, not service considerations. He stated at the Dallas meeting, "We had made a decision from an economic standpoint before the merger and before all of these other things happened to deploy Litespan as our DLC regardless of DSL capabilities because of some economic benefits we got from Litespan."¹⁵

The Commission should not now be forced to rush to judgment to accommodate SBC's newfound sense of obligation for compliance efforts, nor to make up for SBC's slow start. The already tight comment timeframe is rendered wholly unreasonable by SBC's inability to answer reasonable questions posed by CLECs. DATA therefore urges the Commission to modify the current procedural schedule on this issue, to include a full investigation of the myriad issues raised by SBC's proposal.

II. SBC MUST CLARIFY ITS LEGAL POSITION, ADHERE TO APPROPRIATE ACCOUNTING SAFEGUARDS AND COMPLY WITH ALL APPLICABLE STATUTORY AND REGULATORY OBLIGATIONS.

Based on the limited description of the fiber-fed DLC network reconfiguration provided in SBC's *February 15th Letter*, DATA tentatively does not object to SBC owning the ATM Switch/ "OCD" to be placed at the SBC central office, so long as it is crystal clear that SBC's obligation to unbundle, interconnect and collocate at the remote terminal remains in full force.¹⁶ Moreover, DATA notes that the ATM switch/ "OCD" has switching functionality of a type that SBC and other ILECs are currently seeking to prohibit from installation by CLECs in ILEC

¹⁵ Statement of James Keown during Project Pronto meeting in Dallas, Texas on March 1, 2000. This quotation was excerpted from a videotape made of the entire meeting.

¹⁶ DATA recognizes that the Commission's authority to approve and condition a merger between two carriers also provides the requisite authority for the Commission to interpret, waive or amend the conditions upon which the carriers merge.

central offices. In order to avoid discriminatory treatment, SBC would have to oppose the placement of this ATM switch/ "OCD" in SBC's central offices if SBC/ASI were to own the ATM switch/ "OCD" rather than SBC. DATA hopes that this potentially awkward outcome is not SBC's prime motivation for seeking the FCC's approval for SBC to own the ATM switch/ "OCD." Whatever SBC's motivation, DATA conditions its tentative non-objection to SBC's ownership of the ATM switch / "OCD" on SBC's concurrence that CLECs may place ATM switching equipment in their collocation arrangement in SBC central offices. Furthermore, because the safeguards attending a separate subsidiary will not longer pertain if SBC owns the ATM switch/ "OCD," it is essential that appropriate safeguards, including accounting safeguards be put in place to address potential SBC anticompetitive behavior, including cross-subsidies.

At this juncture, however, DATA cannot support SBC's request to own the Alcatel combination voice/DSL plug/cards that will plug into the Alcatel DLCs in the remote terminal locations. As discussed above, DATA find serious problems with a network implementation that restricts available high-bandwidth technology to ADSL only, and to a single vendor's implementation of ADSL. DATA believe that it is, or should be, possible for other DSL vendors to manufacture and supply plug-compatible cards that can be substituted for the ADSL cards. At a minimum, DATA do not find SBC's assertion that it would be infeasible for CLECs to own the DLC cards to be accurate or persuasive. More technical information and discussion on this topic is essential.

Thus, DATA reserves its final position on the appropriate ownership arrangements until further clarification can be obtained from SBC on the arrangements themselves, as well as the legal obligations attached to those arrangements. DATA considers SBC's Request for Interpretation, Waiver, or Modification of the SBC/Ameritech Merger Conditions to be lacking

details necessary to make a reasoned determination of whether the request is consistent with the Telecommunications Act (“1996 Act”) and the Commission’s rules and decisions.

SBC merely requests that the Commission permit the suggested ownership arrangements “by an interpretation of the current Merger Conditions, modification of those Conditions, or an indefinite extension.”¹⁷ Although the final paragraph of the *February 15th Letter* cites two separate provisions in the Merger Conditions, Paragraphs 3.d. and 4.n.(5), relating to ownership of equipment, SBC offers no specifics as to which portions of those paragraphs it suggests as the basis for Commission action. By granting the requested waiver prematurely, the Commission could inadvertently rubber-stamp a network architecture that forecloses unnecessarily, and without the benefit of CLEC input, the ability of SBC’s competitors to bring innovative advanced service alternatives to consumers.

Some members of DATA, including Rhythms, have consistently supported requiring the ILECs to form a separate advanced services affiliate to encourage prompt deployment of advanced services, because of the decreased ability to engage in anticompetitive behavior. For example, the affiliate owning the advanced services equipment would provide some protection against SBC cross-subsidization. The Commission has previously recognized that certain circumstances warrant the use of accounting safeguards to prevent incumbents from enjoying certain unfair advantages of controlling the network,¹⁸ which the Commission should implement where appropriate should SBC retain ownership of the equipment.

Moreover, DATA’s position with regard to the ownership of certain equipment in the fiber network configuration is conditioned on SBC’s continued obligation to adhere to its

¹⁷ *February 15th Letter*, at 6.

¹⁸ *Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, 11 FCC Rcd 17539 (1996).

unbundling, interconnection and collocation requirements. The 1996 Act clearly requires ILECs to provide competitors with access to unbundled network elements, as well as to allow competitors to interconnect with the ILEC network and collocate at the ILEC premises.¹⁹ In addition, the Commission has more clearly defined those unbundling, interconnection and collocation requirements in several subsequent Orders.²⁰ Allowing SBC to provision the components of this new fiber-fed DLC network without regard to these obligations would clearly hinder competition in the local markets and eventually eliminate any further deployment of advanced services. Thus the Commission should explicitly recognize that SBC's new network configuration will still be subject to the unbundling, interconnection and collocation requirements of the Act, as delineated by the Commission.

For these reasons, DATA conditions its initial inclination to support SBC ownership of the ATM switch/ "OCD" on the Commission (1) mandating that SBC to respond fully to the current and future requests of CLECs regarding the details of its "Project Pronto" network reconfiguration; (2) implementing adequate safeguards against any anti-competitive behavior; (3) acknowledging SBC's obligation within the new fiber-fed DLC network to offer CLECs nondiscriminatory interconnection and collocation arrangements, as well as nondiscriminatory access to UNEs; and (4) requiring SBC to provide enforceable assurances to maintain facilities-based competition for subscribers by a) continuing to invest in, maintain, and support, the provision of advanced services over all-copper loop infrastructure and b) setting a clear roadmap

¹⁹ 47 U.S.C. § 251(b), (c) and (d).

²⁰ *Deployment of Wireline Service Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, (rel. Mar. 31, 1999) at paras. 37-45 ("Advanced Services Order"); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Third Report and Order, FCC 99-355 (rel. Dec. 9, 1999) ("Line Sharing Order"); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, FCC 99-238 at 11 (rel. Nov. 5, 1999) ("UNE Remand Order").

towards the development and implementation of an open, competitively neutral fiber-fed DLC loop network that will advance, not reverse, the current benefits of facilities-based local competition.

III. THE COMMISSION SHOULD INITIATE AN EXPEDITED INVESTIGATION TO FULLY EXAMINE SBC'S PROPOSED NEW NETWORK ARCHITECTURE.

In order to preserve a competitive market, incumbent and competitive carriers alike, must coordinate efforts to re-design the network infrastructure that supports all of those carriers' services. Indeed, such coordination is expressly required under the Act.²¹ Yet despite this competitive reality, the proposed provisioning of DSL over DLC as articulated in SBC's proposal contradicts the pro-competitive obligations established in the 1996 Act, as defined and developed by this Commission. SBC's proposal fails in crucial respects to meet the needs of competitors, the goals of this Commission, and the letter and spirit of the 1996 Act.

Even though SBC represents that CLECs' DSL signals will be able to traverse the fiber-fed DLC, SBC's implementation of the network architecture proposed in the *February 15th Letter* is so limiting to CLECs as to be severely discriminatory and anticompetitive. As discussed above, for instance, SBC's proposal limits CLECs' choice of equipment vendors, CLECs' use of a variety of xDSL technologies, and the overall capabilities, including speed, of the advanced services CLECs can offer under SBC's proposal. Moreover, these limiting parameters prescribed by SBC for transmitting DSL through a DLC would also reinstate anti-competitive tactics, such as spectrum management, that this Commission has previously rejected. In addition, when queried by Rhythms and other DATA members, SBC indicated that it has already abandoned several of the positions set forth in its filing made with the Commission just

²¹

47 U.S.C. § 256.

two weeks ago, raising serious concerns for competitors trying to understand its proposal.

Furthermore, SBC's refusal to consider any CLEC input or needs in the development of SBC's proposal foretells the true discriminatory and anticompetitive potential impact of SBC's Project Pronto, and is a clear violation of the 1996 Act. The business implications of Project Pronto on both SBC and its competitors require expedited resolution of the outstanding technical issues associated with providing advanced services over a predominantly fiber-based local network.

A. The Commission Should Not Permit SBC to Unilaterally Redesign the Public Network to Limit Competitive Innovation in the Advanced Services Market.

SBC recently announced its Project Pronto, which includes deploying new and retrofitted DLCs at over 20,000 remote locations throughout its 13-State network.²² Locating DLCs in its remote terminals allows SBC to provide its services over a predominantly fiber-based infrastructure. Within this type of infrastructure, SBC can provide DSL-based high bandwidth services to approximately 80% of the customer loops in SBC's thirteen states via fiber cabling all the way into the neighborhoods.²³

The CLEC-supplied DLC line card proposal SBC summarily rejects would enable a variety of technologies to be deployed by a variety of CLECs, each through the use of their own plug-in card.²⁴ Instead, SBC proposes that it will own the single vendor, single xDSL technology plug-in cards and lease them to data CLECs. SBC thus proposes to re-monopolize the use of the network for advanced services via its control of the DLC line cards, its choice of

²² "Project Pronto Neighborhood Gateway Notice" http://www.sbc.com/PublicAffairs/PublicPolicy/pronto_gateways/Home.html (dated Feb. 15, 2000)("Project Pronto Neighborhood Gateway Notice").

²³ "Project Pronto Neighborhood Gateway Notice"

²⁴ *February 15th Letter* at 2-3.

remote terminal sizes and configurations, and its choice of fiber feeder-based ATM transport configurations.

1. SBC must not restrict the flexibility, capability and interoperability of the equipment deployed in any manner that alleviates the unbundling and collocation requirements.

In the *UNE Remand Order*, the Commission noted that

[i]n cases where the incumbent multiplexes its copper loops at a remote terminal to transport the traffic to the central office over fiber DLC facilities, a requesting carrier's ability to offer xDSL service to customers served over those facilities will be precluded unless the competitor can gain access to the customer's copper loop before the traffic on that loop is multiplexed.²⁵

The concept of gaining access to the physical loop facility prior to multiplexing supports the contention that competitors have a right to plug DSLAM cards into the serving DLC.

Furthermore the Commission recognized that the collocation requirements detailed in the *Advanced Services Order* apply to remote terminal collocation as well.²⁶ Based on this conclusion, SBC cannot now take away the competitors' right to collocate cards in the DLC and relapse into a state of SBC ownership, which SBC's proposal suggests. As the Commission rightly has concluded, "it is only through owning and operating their own facilities that competitors have control over the competitive and operational characteristics of their service, and have the incentive to invest and innovate in new technologies that will distinguish their services from those of the incumbent."²⁷ SBC's proposal would thwart this goal in several ways.

First, SBC proposes that essentially one vendor manufacture the vast majority of all of the DLC cards (Alcatel) and the ATM switch/ "OCD" (Lucent) to be deployed in Project Pronto.

²⁵ *UNE Remand Order*, ¶ 219.

²⁶ *UNE Remand Order*, ¶ 221.

²⁷ *UNE Remand Order*, ¶ 7.

Limiting the source of the cards and switches to a single vendor inserts an unnecessary bottleneck into the provisioning of the wholesale services to competitors. With only one manufacturer, there is no alternative if demand cannot be met, and no competition to keep prices reasonable. Moreover, there is no competitive pressure to develop new features and functions. For these reasons, DATA submits that a multi-vendor environment is required in order to provide the flexibility and interoperability needed for competitors to succeed in the advanced services market.

From a technical standpoint, the DLC environment is clearly capable of supporting cards from multiple vendors supporting multiple types of DSL, including ADSL, RADSL, SDSL, IDSL, HDSL2, and SHDSL. While true interoperability of such cards is not available today, it would be a simple matter to publish the specifications for the proprietary card slots in the Alcatel DLC so that other vendors could manufacture plug-compatible cards. DATA acknowledges that other vendors do not currently manufacture cards that are plug-compatible with Alcatel's Litespan DLC; DATA also realizes that no product is likely to be manufactured prior to demand arising for such a product. Moreover, the cards that SBC proposes to use are capable of only serving two end-users, though other vendors' cards have the capacity for serving four, six or even eight end-users.

In order to maximize the competitive potential of the DLC, the DLCs deployed in Project Pronto should also have the capacity for a multi-port backplane that allows competitors to create and manage their own Permanent Virtual Path back to the competitors' equipment, either in the central office or at the CLECs' POP. With the addition of line-card-based DSLAM capability to DLCs, the DLC manufacturers have provided an additional data port to the existing circuit switched ports on the DLC. In the configuration proposed by DATA, the DLC vendors would

merely provide SBC with DLCs with multiple WAN ports, as opposed to the current two-port DLC. Furthermore, SBC plans to dedicate a single fiber pair carrying an OC-3 signal for the transmission of data between the DLC in the remote terminal and the ATM Switch/ "OCD" in the central office. This physically limited transport capacity also would make any sort of adjacent collocation at the remote terminal essentially impossible. SBC should be required to configure its DLCs to allow CLECs' data bitstreams to be multiplexed into the circuit-switched traffic carried on the OCn fibers.

2. SBC must not limit the capability of the configuration to support competitive advanced services.

One promise of supplementing the existing local loop network with more fiber was to provide for increased speed and flexibility in the transmission of communications over an optical cable, as opposed to a plain copper wire. In the case of DSL over fiber-fed DLC, this promise evaporates under SBC's proposed network topology. SBC's February 15th proposed interconnection agreement language imposes unilateral limitations that restrict CLECs from provisioning advanced services at a variety of speeds, using a variety of technologies or sharing with a variety of carriers.

As the Commission has just recently reiterated, "[w]ithout access to these [xDSL-capable] loops, competitors would be at a significant disadvantage, and the incumbent LEC, rather than the marketplace, would dictate the pace of the deployment of advanced services."²⁸ SBC's new network deployment plans, coupled with its proposed interconnection agreement language, would lead to the result proscribed by the Commission. SBC's proposed architecture

restricts competitors to providing only ADSL notwithstanding the fact that the same network configuration can support all other xDSL technologies.

The Commission has also recognized the competitive importance, particularly for broad residential deployment of advanced services, in ensuring CLEC access to the unbundled high frequency portion of a loop,²⁹ “enabl[ing] advanced services providers to develop and deploy more rapidly new technologies and innovative services, benefiting consumers through lower prices and increased product choice.”³⁰ Nevertheless, under the SBC proposal, SBC intends to construct a fiber-fed DLC network that precludes data CLECs from sharing loops with the voice services of any other carrier besides SBC, because no explicit requirement exists to assist the CLECs in line sharing with one another. In other words, if carriers in the DATA coalition wanted to share a line with themselves or with any non-incumbent voice provider, those carriers would have to deploy not only their own remote terminal locations, but also their own feeder cable back to the SBC central office or CLEC POP.

In addition, though SBC foresees no capacity constraints on the OC-3c, SBC’s proposed interconnection agreement language limits the speeds for transporting the data between the remote terminal and the central office to 1.544 Mbps downstream and 381Kbps upstream. ADSL is capable of transmission speeds of over 8 Mbps and SBC’s Pacific Bell subsidiary *guarantees* speeds of 1.544 Mbps downstream and 384 Kbps upstream without *any* stated maximum speed. Thus, SBC is deploying fiber facilities with practically infinite bandwidth between remote terminals and central offices, and then artificially choking down that “big pipe” for CLECs who use SBC’s Broadband UNE, without imposing similar limitations on its own

²⁹ *Line Sharing Order*, ¶ 13, 17.

³⁰ *Line Sharing Order*, ¶ 10.

retail advanced services. DATA therefore must conclude at this point that SBC's new network architecture proposal, as detailed in the attached SBC contract language, fails to provide an open architecture with the capability and flexibility to accommodate competitors, and thus to meet SBC's unbundling and collocation obligations pursuant to the 1996 Act.

B. The Commission Must Encourage Advanced Services Deployment by Ensuring an Open Network Topology, and by Ensuring That Competitors Have the Ability to Share in the Design of That Topology.

In addition to its unbundling and collocation obligations, SBC disregards its statutory responsibility to the competitors involved with infrastructure sharing. The 1996 Act explicitly mandates a cooperative effort in designing the future of the public network in a nondiscriminatory manner. Section 256 of the Act clearly states that:

It is the purpose of this section (1) to promote nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks used to provide telecommunications service through (A) coordinated public telecommunications network planning and design by telecommunications carriers and other providers of telecommunications service; and (B) public telecommunications network interconnectivity, and interconnectivity of devices with such networks used to provide telecommunications service³¹

To advance the coordination of interconnectivity, Congress also granted the Commission the authority to establish procedures to oversee this coordination of network planning and to participate in appropriate industry standards-setting organizations that promote access to the public network.³² Furthermore, Section 259 of the 1996 Act requires the carriers sharing the infrastructure to make available such infrastructure along with the corresponding technology, information, facilities and functions, as long as the coordination meets economic reasonableness

³¹ 46 U.S.C. § 256(a).

³² 47 U.S.C. § 256(b).

and public interest standards.³³ In determining the appropriate configuration for the fiber-fed DLC local network, not only did SBC decline to seek competitors' input on the redesigning of the infrastructure, and ignore that competitors may prefer a different configuration of the loop plant infrastructure, SBC made a unilateral decision *not* to take competition into consideration when redesigning its loop plant infrastructure. SBC's proposal, if implemented, would ensure that SBC's network was as discriminatory, closed and inaccessible as possible to the largest number of service providers and vendors by squelching the voice and data competitors' participation in the fiber network planning and design.

DATA carriers have met with SBC regarding its proposal. For instance, Covad and NorthPoint were given an opportunity in the days before SBC's *February 15th Letter*, and Rhythms met with SBC for the first time about the configuration of the fiber network on Monday, February 28th, almost two weeks after SBC announced Project Pronto and over one year after SBC launched its internal efforts to develop the xDSL-capable fiber-fed DLC environment. After SBC presented the exact proposal included with the *February 15th Letter*, Rhythms and other members of DATA raised numerous questions about the proposal. SBC was unable to answer many of these questions and deferred the unanswered questions to the March 1 meeting in Dallas.

At the Dallas meeting, SBC made it clear that "no CLEC input" had been sought or obtained in developing their proposed change in network topology. SBC also admitted that the proposed unbundled product outlined in its *February 15th Letter* has "fundamentally changed" since the filing, but SBC did not provide new proposed interconnection agreement language reflecting any specific changes in the UNE. All CLECs involved in the Dallas meeting

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47 U.S.C. § 259.

expressed detailed concerns with the technical and operational parameters presented in the SBC filing, which could not be addressed in this meeting because the filing was out-of-date already. Furthermore, SBC acknowledged that configuring the DLC environment in a new fiber infrastructure to accommodate competition is technically feasible, but that SBC had not taken such issues into consideration during development of the unbundled product.

DATA urges the Commission to initiate an expedited investigation to address all the issues related to SBC's new network deployment discussed above, as well as additional issues that may arise as SBC reveals additional information about that deployment.³⁴ The Commission should move quickly because SBC plans to begin to deploy its Project Pronto in May 2000.³⁵ The Commission clearly may use this investigation to establish the provisions and conditions that are necessary to encourage the deployment of advanced services and the ability of competitive providers to interconnect with the SBC network, given SBC's proposal to institute a fiber-based loop infrastructure.³⁶ The Commission has broad discretion on the scope and timeliness of this proceeding. The Commission should conduct on-the-record technical conferences and industry roundtable discussions that will allow the Commission and interested parties to get answers to the many pending questions on SBC's fiber-based local network. DATA therefore requests that the Commission immediately initiate an investigation to enumerate the unbundling and collocation obligations involved in the fiber-fed DLC

³⁴ Although DATA has no desire to delay resolution of SBC's proposal beyond the time when all information relevant to that decision has been produced and analyzed, DATA reserves the right to request a formal Commission rulemaking on SBC's proposed new network architecture. The need to do so will be a function of the degree of SBC's openness and responsiveness to the many pending technical and operational questions in this matter.

³⁵ Pending completion of the Commission's investigation, of course, any Project Pronto deployment by SBC must occur at SBC's own risk.

³⁶ 47 U.S.C. §§ 201, 202 and 251; *see also* Telecommunications Act of 1996, § 706.

environment and to allow CLECs' involvement in the network planning and design of the fiber-fed DLC environment.

CONCLUSION

For all these reasons, the Commission should:

1. Require SBC to provide further information on its proposal through on-the-record technical forum and expand the procedural schedule in this case to accommodate interested party comment after the information is provided;
2. Implement adequate safeguards against any anticompetitive behavior as described herein;
3. Acknowledge SBC's obligation within the new fiber-fed DLC network to offer CLECs nondiscriminatory interconnection and collocation arrangements, as well as nondiscriminatory access to UNEs;
4. Require SBC to adhere to its further obligation allow CLECs input into infrastructure design; and
5. Initiate an expedited investigation to ensure the deployment of a competition-ready network topology.

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ATTACHMENT A
TECHNICAL AND OPERATIONAL QUESTIONS REMAINING UNANSWERED
REGARDING SBC'S NEW NETWORK TOPOLOGY

Network Architecture/Performance Questions

- SBC's Alcatel DLC will support only ADSL service.
 1. What steps is SBC taking to determine when the Alcatel DLC can support cards for other types of xDSL?
 2. When will SBC support types of xDSL other than ADSL?
 3. In which RTs will SBC support the different types of xDSL?
 4. Will SBC evaluate other vendors' equipment that can support multiple types of xDSL?
 5. Could Alcatel modify its DLC to accept cards from different manufacturers that support other types of xDSL?
 6. Will SBC permit CLECs to specify the line cards to be placed in the SBC remote terminals that will be used to serve that CLEC's customers?
- SBC will initially offer only Unspecified Bit Rates PVCs.
 7. Will SBC offer other ATM QoS Classes such as Constant Bit Rate, so that CLECs can support voice or video over DSL?
- SBC has announced that CLECs may not order a UNE under this new network topology to provide integrated voice and DSL service on a single loop. This limitation is a serious competitive disadvantage to CLECs.
 8. Will SBC reconsider this issue and allow CLECs to offer voice and DSL over a single UNE that uses the fiber-fed DLC?
- SBC has announced that it *will not* cut over existing customers to the new Project Pronto topology, and that, SBC will utilize the new Project Pronto remote terminals only to support new POTS growth and DSL line-shared services.
 9. Why is it SBC's policy not to cut over existing customers to the new Project Pronto topology?
 10. Is SBC's policy subject to revision?
 11. If SBC changes its policy, what steps will SBC take to ensure that a sufficient number of copper-only loops remain available for CLEC's DSL service?
 12. Will SBC cut over existing T-1 lines to the new Project Pronto topology immediately?
- SBC claims that its new network topology will not remove from service any home run copper loops currently in service at distances greater than 12 kilofeet.

13. How is it possible to deploy the fiber-fed RT SBC proposes while leaving in place all home run copper?
14. Will SBC maintain parallel copper feeder facilities from the SAI all the way to accomplish its claim?
- SBC claims that its new network topology will not result decrease the number of copper loops available to support DSL services.
 15. What will be SBC's primarily use of copper loops located between the RT and the Central Office?
 16. Will such loops be used to support growth in the service area between the RT and the Central Office or will it they be reserved for CLEC use to provide xDSL services over clean copper loops beyond the RT?
- SBC will require CLECs to purchase an OCD Port Termination and OCD Cross-Connect element.
 17. What are all of the possible end points of the transport from the OCD in the Central Office? (*See* § 14.2.2)
- SBC's proposed contract language restricts cross-connect capacity exclusively to DS-3 and OC-3.
 18. Why is SBC limiting cross connect capacity to DS-3 and OC-3?
 19. Could CLECs have the option of ordering cross connect capacity at DS-1 and OC-1?
- SBC's proposed contract language restricts the amount of capacity in the OC-3c (reserved for digital data transmission) available to CLEC DSL providers to 75%.
 20. Why has SBC imposed this capacity restriction on the OC-3c?
 21. Because the OC-3c is being used solely for data transmissions, why is the capacity restriction set so low?
 22. What effect will this capacity restriction have on the performance of CLEC PVCs carried over the OC-3c?
- SBC has provided a color diagram depicting the various components of its new network topology.
 23. Will the connection (represented in orange on SBC's diagram) from the OCD to the switch, whichever switch (POP, CLEC CO, etc.), be provisioned as a UNE transport product or be included in the proposed broadband UNE?
- SBC's proposed contract language mentions the CLEC collocation space in the serving wire center and the CLEC POP.
 24. In what manner will SBC be offering transport between the CLEC collocation space and the CLEC POP?

25. How will this SBC provision of transport be impacted by limitations SBC has previously placed in the transport provisions of existing interconnection agreements?
- SBC has announced it will roll out 20,000 remote terminals over three years under its Project Pronto.
 - 26. What is the average total number of fibers that will initially be rolled out to each remote terminal location?
 - 27. What is the capacity of the fibers that will be rolled out to the remote terminal locations?
 - 28. How will SBC ensure a blind system for orders to collocate in the remote terminals as between CLECs and SBC ASI?
 - SBC's Project Pronto includes an ATM switch, which SBC dubs an Optical Concentration Device ("OCD") in the central office.
 - 29. When can CLECs expect SBC to make available to them the ability to utilize permanent virtual paths (PVPs), as opposed to the smaller permanent virtual circuits (PVCs)?
 - 30. If CLECs were able to use PVPs, would CLECs then have access to the element manager to control those PVPs?
 - SBC will place a DLC in the remote terminal that is DSL-capable.
 - 31. Will SBC offer to CLECs dedicated WAN ports on the back plane of the digital loop carrier at the SBC Remote Terminal?
 - SBC has announced it will utilize two separate fiber feeder cables to carry the voice and the data traffic between the Remote Terminal and the SBC central office.
 - 32. Does technology exist that would eliminate the claimed need to carry voice and data on separate fiber cables from the RT to the central office?
 - 33. Why is SBC utilizing two OC-3 fibers between the RT and central office rather than a single OC-12 for combined voice and data?
 - If SBC is allowed to implement Project Pronto, will SBC still permit CLECs to obtain home run copper from the demarcation point at the end user premises to the SBC serving wire center?
 - 34. If not, why not?
 - 35. Will SBC automatically migrate existing CLEC xDSL UNE loops to the new broadband UNE?

Ordering, Provisioning and Cost Questions

- SBC has not provided any rates, cost studies or cost support data for the new broadband UNE it proposes.

36. Will SBC propose rates for the broadband UNE both as a whole and in sub-parts, assuming SBC will permit CLECs to order portions of the proposed offering without ordering the entire offering?
37. Does SBC intend to propose to charge non-recurring and monthly recurring charges?
38. Will the rates differ from state to state?
39. When can CLECs expect to see the cost studies for such rates, or at least the proposed rates and the drafts of the underlying cost support?
- SBC has not provided any information regarding intervals.
 40. What intervals does SBC intend to propose (e.g., provisioning and installation interval; maintenance and repair interval) for the broadband UNE?
 41. Will intervals apply to the UNE as a whole or in parts (assuming CLECs will be allowed to order only portions of the proposed offering)? Will the intervals be much shorter than current local loop intervals?
 42. Will loop de-conditioning ever be necessary? If so, can CLECs appropriately assume that SBC will incur all costs associated with conditioning and will not charge CLEC for loop de-conditioning?
 43. Will SBC automatically require truck rolls with the provisioning of any and every BoadBand UNE, or any portion thereof?
- SBC has not provided information regarding the OSS it will use to support the pre-ordering, ordering, provisioning, billing, and maintenance and repair of the broadband UNE.
 44. What are SBC's plans, both short and long term?
- SBC has not provided a sufficient description of the "loop qualification" process *required* for the broadband UNE.
 45. Will loop qualification be mechanized or manual?
 46. Will loop qualification be mandatory for all loops?
 47. How do CLECs place orders for loop qualification?
 48. Can SBC's existing loop pre-qualification or qualification systems be used in lieu of any new OSS?
- When will SBC provide CLECs with the Technical Publications references in § 3.2 of its proposed language for interconnection agreements.
 49. If these publications are not yet final, when will SBC provide CLECs with the current drafts of the Technical Publications and when does SBC expect the publications to become final?
 50. When will SBC provide CLECs with the Methods and Procedures, or at least their current drafts, that detail the ordering and provisioning requirements SBC expects

CLECs to follow in obtaining the broadband UNE, and detailing outside plant requirements related to the broadband UNE?

51. What is the Customer Information Form and how should it be filled out?
52. Is the Customer Information Form the same as the “profile” that each CLEC must complete specifying the technical parameters of permanent virtual circuits from the RT to the CO?
53. Does CLEC have access to the element manager administering the fiber feeder?

SBC's Broadband UNE Contract Proposal

- SBC has indicated that it will be distributing a new form of interconnection agreement for its 13-state region.
 54. Is SBC requiring, as a prerequisite to a CLEC obtaining access to DLE-DSL UNEs, that CLEC negotiate the entire 13-state agreement?
 55. Alternatively, is SBC requiring CLEC to adopt the APPENDIX DLE-DSL?
 56. How much flexibility will SBC permit during such negotiations?
 57. Will SBC consider any CLEC proposals for different network architecture structures than are contained in its proposals?
 58. When can the CLECs receive the proposals for the other appendixes referenced in the APPENDIX DLE-DSL, such as the APPENDIX DSL and APPENDIX HFPL referenced in § 3.6?